

Student Sexual Misconduct Prevention and Response Policy

Emergency Assistance

(1) If someone is in immediate danger or requires urgent medical attention, use the Emergency Assistance contacts:

Emergency Assistance
On campus - (02) 9850 9999
For immediate help on campus
Off campus - 000
For immediate help off campus

(2) For other support service contact information, see the Support Services Contact Information in the [Student Sexual Misconduct Prevention and Response Procedure](#).

Section 1 - Purpose

Background

What is Sexual Misconduct?

(3) Sexual misconduct, for the purposes of this Policy is defined in Section 5. By way of summary, sexual misconduct includes any sexual act or sexual behaviour when a person did not consent to sexual contact or a sexual act, physically, verbally or online. It includes sexual assault and sexual harassment.

(4) Consent, for the purposes of this Policy is defined in Section 5. By way of summary, consent means a person has freely chosen to take part in sexual activity, whether online or physical. Every person has a legal right to choose whether to participate in a sexual activity and consent can be revoked at any time during a sexual interaction (see section 61HI of the [Crimes Act 1900](#) No 40).

(5) All members of the Macquarie University Community have the right to be treated with dignity and respect, and to work or study in a safe environment.

(6) Sexual misconduct can cause significant harm to individuals and communities.

(7) Sexual misconduct is unacceptable, illegal, and prohibited by the University.

(8) This Policy should be read in conjunction with the [Student Sexual Misconduct Prevention and Response Procedure](#).

(9) This Policy sets out:

- a. behaviours that are not accepted by Macquarie University;
- b. what consent means in relation to those behaviours;
- c. how reports of sexual misconduct concerning Macquarie University students can be made to the University;
- d. how the University will respond to a report about sexual misconduct committed by a student; and

- e. the University's commitment to prevent sexual misconduct within the Macquarie University community, through student and staff education.

Scope

(10) This Policy applies to Macquarie University students when engaged in University activities or on University premises. University activities include a broad range of activities occurring on and off campus, including University-sponsored social events, and activities that use online platforms and / or social media.

(11) For concerns about staff behaviour, refer to the [Staff Sexual Harassment Prevention and Response Policy](#).

(12) Where sexual misconduct is reported and is outside the scope of this Policy, support services and referrals will be offered, however, the incident(s) may not be investigated by the University.

(13) This Policy does not apply to sexual interaction, flirtation, attraction, or friendship which is invited, mutual, consensual, or reciprocated. However, behaviours can become sexual misconduct if the interaction changes to non-consensual, unwelcomed or unreciprocated and the behaviours continue.

(14) This Policy does not apply to sexual misconduct affecting anyone under the age of 18. Reports of child abuse, which includes any sexual offence or sexual misconduct involving children or young people under 18 must be managed in accordance with the [Children at Macquarie University Policy](#) and [Children at Macquarie University Procedure](#).

Section 2 - Policy

University Responsibilities

(15) The University is committed to providing a safe environment. Macquarie University students should behave in an inclusive and respectful way.

(16) The University will:

- a. implement education and training for students, including mandatory education and training;
- b. implement education for staff, regarding prevention, support and report options for students;
- c. provide trauma-informed support services to students who are reported to have experienced sexual misconduct;
- d. provide students with ways to report behaviour to the University, including anonymous reports;
- e. assess all reports of sexual misconduct;
- f. consult with the person who experienced sexual misconduct where the person has been identified and given their consent to be consulted; the University will take their wishes into account when responding to a report;
- g. ensure procedural fairness;
- h. ensure confidentiality and privacy, in accordance with University policy;
- i. impose a sanction, if a University investigation finds that a student or student organisation has breached this Policy and the University's [Student Code of Conduct](#); or
- j. consider disciplinary action if a report is assessed to be vexatious or malicious. See the Definitions in Section 5 for more information about when a report may be considered vexatious or malicious.

Student Responsibilities

(17) Students must not engage in acts of sexual misconduct, including acts of sexual assault or sexual harassment.

(18) Students are required to undertake mandatory education and training in relation to sexual misconduct and consent. The University may implement sanctions for students who do not complete mandatory education and who do not request to opt-out of mandatory education.

(19) Students who lead student groups at Macquarie must actively seek to prevent sexual misconduct affecting the members of student groups by:

- a. completing required training and education;
- b. encouraging student group members to complete education; and
- c. planning group activities so that activities do not increase the risk of sexual misconduct occurring.

(20) Student leaders of Student Organisations at the University must also respond to sexual misconduct occurring in the student group or during group activities. Student leaders must seek advice from Macquarie University staff who support student groups and activities, if they are aware sexual misconduct may have occurred.

Support

(21) The safety and wellbeing of students are priorities of the University. The University will provide accessible support for students affected by sexual misconduct, whether or not the incidents occurred during university activities or on university premises. Students can request support from the University's services, or from support services outside the University.

(22) Students at Macquarie who report they have experienced sexual misconduct can decide whether to share information with the University or not.

(23) Support provided by the University may include helping a student to access adjustment to their studies to support their safety, wellbeing, or academic progress. Seeking support does not lead to an investigation by the University.

(24) For contact details of support services on and off campus, and examples of the kind of support a student may be able to access, see the [Student Sexual Misconduct Prevention and Response Procedure](#).

Reporting

(25) The University encourages anyone in the Macquarie University Community who is affected by sexual misconduct to make a report to the University. Members of the University Community who have experienced sexual misconduct have the right to decide what information they report.

(26) Sexual misconduct affecting students can be reported to the University anonymously, or a person making a report can choose to provide their identity. A report can be made by the person who experienced the behaviour, or by someone who witnessed or heard about the behaviour.

(27) If a report about sexual misconduct is made about a person who is not a member of the Macquarie University community, it may not be possible for the University to investigate the person.

(28) For more information about how reports involving students can be made to the University and what happens when a report is received, see the [Student Sexual Misconduct Prevention and Response Procedure](#).

(29) Staff experiencing sexual misconduct should contact Human Resources at Macquarie University. These reports will be managed according to the [Staff Sexual Harassment Prevention and Response Policy](#).

Anonymous Reports

(30) When an anonymous report is made, the University may not be able to take any further action. The information provided in an anonymous report will be used to monitor sexual misconduct affecting the Macquarie University Community, and to identify potential improvements to safety on campus.

(31) The assessment of an anonymous report may lead to information being shared with [NSW Police](#) or other relevant government agencies.

(32) For more information about when information from anonymous reports may be shared with other organisations, refer to 'Privacy and Confidentiality' in this Policy.

Reports with Identity Confirmed

(33) Reports with identity include the identity of the person who reports experiencing sexual misconduct or the identity of the person who submitted the report.

(34) The University will consult with a person making a report with identity regarding what response they wish the University to implement. Reports with identity may be treated as a complaint, which may lead to a University investigation.

(35) A report with identity that concerns the actions of a student or a student organisation may result in the University putting in place interim measures affecting students.

(36) The University may respond to a report with identity according to the [Student Conduct Rules](#) and [Student Conduct Procedure](#).

Reports on Behalf of Another Person

(37) The University will accept reports made by a person who has witnessed or heard about a student experiencing sexual misconduct.

(38) The University may not be able to respond to a report made on behalf of another person, if the person who is reported to have experienced the sexual misconduct does not share their identity with the University.

Reports to External Organisations

(39) Members of the Macquarie University Community can report sexual misconduct to external organisations. Any student who reports sexual misconduct has the right to report to an external organisation, and the right to decide not to report.

(40) If a report is made to an external organisation, such as [NSW Police](#), a University response may need to be delayed. However, the University may still implement interim measures.

Interim Measures

(41) Interim measures against a student can be put in place by the University to for reasons of safety or to reduce the potential for harm to any member of the Macquarie University Community. Interim measures do not anticipate the outcome of any University or external investigation and are not a determination. Interim measures may be put in place at any stage following a report of sexual misconduct and whether or not a complaint has been assessed or investigated.

(42) Interim measures are temporary restrictions or requirements regarding who a student can contact, or how they can contact someone, or where and when they can go on campus. These restrictions or requirements may be in place for a length of time which the University considers appropriate. The University may also place conditions on the

restrictions or requirements, if appropriate. Interim measures may be applied to any student. Interim measures cannot be implemented unless a report of sexual misconduct has been made to the University or an external organisation.

(43) If the University or an external organisation is investigating a report, the University may put in place interim measures against a student before the investigation has been completed.

(44) A student who is subject to interim measures has the right to request a review of interim measures.

(45) See the [Student Sexual Misconduct Prevention and Response Procedure](#) for more information about interim measures.

Privacy and Confidentiality

University Responsibilities

(46) Information from a report may be disclosed for a specific purpose, if the person making the report has given consent to disclosure. Otherwise, the University will keep reports about sexual misconduct confidential, with some limitations (see clauses 47 – 50).

(47) The University may be required to report information about a ‘serious indictable offence’ to Police, in accordance with section 316 of the [Crimes Act 1900](#) (NSW). In relation to sexual assault, a person or institution may have a reasonable excuse not to report information to [NSW Police](#) if

- a. the person impacted was an adult at the time they shared the information; and
- b. it was reasonable to think that the person impacted did not want the information reported to [NSW Police](#).

(48) Mandatory reporting legislation may also affect confidentiality. Information about sexual misconduct involving people under 18 years old (whether as alleged victim, perpetrator or witness) must be reported to relevant government agencies, which may include the [NSW Police](#). Some information about sexual misconduct which occurs during programs funded by the Australian [Department of Foreign Affairs and Trade](#) (DFAT) must be reported to DFAT.

(49) The University is obliged to protect student and staff safety and may need to provide information to the [NSW Police](#) and / or relevant government agencies to ensure the safety of the Macquarie University Community.

(50) Within the University, information from a report may only be accessed by staff who need this information to act on the responsibilities specified in this Policy. Where the University responds to a report, students and staff involved in the response of any investigation must keep all information about the report, the investigation, and the University response confidential. A University response includes an investigation, a finding, or outcome.

Student Responsibilities

(51) Students involved in any report, investigation or response may only disclose information about the University process if seeking support or advice in the following contexts:

- a. a confidential communication to immediate family members or trusted person;
- b. a University staff member
- c. a registered health professional (such as a General Practitioner or psychologist);
- d. a spiritual leader or Elder;
- e. a registered legal practitioner;
- f. [NSW Police](#); or
- g. staff from relevant government agencies, including the [Anti-Discrimination Board of NSW](#), [Australian Human Rights Commission](#), [Tertiary Education Quality and Standards Agency](#) or [NSW Ombudsman’s Office](#).

(52) Disclosure of information about a report, University response or investigation may be a breach of the [Student Conduct Rules](#) and [Student Conduct Procedure](#).

Protection from Reprisals, Retaliations, or Threats

(53) Students must not victimise another person, or commit or threaten to commit an act of reprisal, because that person has:

- a. asked for support regarding sexual misconduct;
- b. reported sexual misconduct;
- c. provided information about a report of sexual misconduct;
- d. referred someone else to support in relation to an experience of sexual misconduct;
- e. helped someone else to make a report of sexual misconduct; or
- f. been the subject of a report of sexual misconduct.

(54) Victimisation or reprisal may lead to disciplinary action under the [Student Conduct Rules](#) and [Student Conduct Procedure](#).

Investigation by the University

(55) An investigation in accordance with the [Student Conduct Procedure](#) will assess whether, on the balance of probabilities and based on the evidence available, the behaviour reported is proven to have occurred. It will assess whether the behaviour reported is a breach of this Policy or the University's [Student Code of Conduct](#).

(56) Where a University investigation concludes that the behaviour reported is a breach, a finding of Misconduct or Serious Misconduct may be made under the [Student Conduct Rules](#). The [Student Conduct Procedure](#) lists a range of sanctions that may be imposed on a student, or student organisation, as the result of finding of Misconduct or Serious Misconduct.

(57) Macquarie University will assess reports, conduct investigations, and make decisions and findings in accordance with the requirements of procedural fairness.

Appeals or Dissatisfaction with University Response

(58) Where a student has made a report to the University about sexual misconduct, and is not satisfied with the University response, the student can make a complaint to the University or to an external organisation, as described in the [Complaints Resolution Policy for Students and Members of the Public](#).

(59) Findings or penalties imposed under the [Student Conduct Rules](#) can be appealed according to the [Student Conduct Procedure](#).

Mandatory Education

(60) The University may make online or face-to-face education mandatory for Macquarie University students, or Macquarie University students engaged in specific activities (such as leading student groups).

(61) A student may request to opt-out of part or all of education, if:

- a. they can provide evidence showing they completed the education course or its equivalent within the last 36 months; or
- b. they indicate that past experiences mean participating may have a significant, negative effect on their wellbeing.

(62) The University may impose a sanction on students who do not complete mandatory education, and do not request to opt-out of mandatory education.

Section 3 - Procedures

(63) Refer to the [Student Sexual Misconduct Prevention and Response Procedure](#).

Section 4 - Guidelines

(64) Nil.

Section 5 - Definitions

(65) For the purposes of this Policy and the [Student Sexual Misconduct Prevention and Response Procedure](#), the following definitions apply:

- a. Balance of Probabilities: A standard of proof that requires the decision maker to be satisfied, taking into account all relevant information, that the matter found to have occurred is more likely to have occurred than not.
- b. Consent:
 - i. A person consents to a sexual activity if, at the time of the sexual activity, the person freely and voluntarily agrees to the sexual activity.
 - ii. A person may, by words or actions, withdraw consent to a sexual activity at any time.
 - iii. Sexual activity which occurs after consent has been withdrawn occurs without consent.
 - iv. A person who does not offer physical or verbal resistance to a sexual activity is not to be taken to consent to the sexual activity.
 - v. A person who consents to a particular sexual activity is not taken to consent to any other sexual activity. For example, if a person consents to sexual activity using a condom, they cannot be taken to have consented to sexual activity without using a condom.
 - vi. A person who consents to a sexual activity with a person on one occasion is not to be taken to consent to sexual activity with that person on another occasion, or taken to consent to sexual activity with another person on that, or another occasion.
 - vii. A person does not consent to a sexual activity if:
 - they do not say or do anything to communicate consent;
 - they are asleep or unconscious;
 - they are substantially intoxicated by alcohol or any drug;
 - they do not have capacity to consent;
 - the person participates in the sexual activity because of coercion, blackmail or intimidation, regardless of:
 - when the coercion, blackmail or intimidation occurs, or
 - whether it occurs as a single instance or as part of an ongoing pattern;
 - they participate in the sexual activity because of force, fear of force or fear of serious misconduct of any kind to the person, another person, an animal or property, regardless of:
 - when the force or the conduct giving rise to the fear occurs; or
 - whether it occurs as a single instance or as part of an ongoing pattern;
 - they are unlawfully detained;

- they are pressured to engage in sexual activities by another person who is in a position of power, authority, trust or dependence;
- they are tricked or mistaken about the identity of any person involved;
- they are tricked or mistaken about the situation;
- they participate in the sexual activity because of a fraudulent incentive; or
- they are under 16 years of age.

This section does not limit the grounds on which it may be established that a person does not consent to a sexual activity. In this section fraudulent inducement does not include a misrepresentation about a person's income, wealth or feelings.

c. Macquarie University Community includes the following:

- i. members of the University Council;
- ii. Staff (see Definition below);
- iii. Students (see Definition below);
- iv. student organisations including student groups, clubs, and societies;
- v. sub-contractors working on University Premises;
- vi. tenants and licensees of University Premises and their officers and staff;
- vii. persons conducting an authorised business or other activity upon University Premises;
- viii. members of the public who are visiting University Premises, or taking part in University Activities;
- ix. people external to the University with whom students or staff interact as part of their study or work (e.g. employers supervising student placements); and
- x. residents in University Accommodation.

d. Trauma-informed refers to an approach that supports a victim or survivor's rights and wishes, and prioritises safety, dignity and respect.

e. Sexual misconduct includes a range of unacceptable sexual conduct that a person does not consent to, including the conduct described below. Threatening to engage in this conduct may also be considered sexual misconduct.

- i. sexual assault – the penetration of a person's genitals or anus by another person using any part of their body or an object, and oral sex, regardless of either person's gender or sex.
- ii. sexual touching – touching or threatening to touch a person in a sexual way. It can include:
 - unwanted touching of a person's breast, bottom, or genitals;
 - whether or not the breasts are sexually developed; and
 - regardless of the person's gender or sex;
 - touching on top of or under clothing that does not penetrate someone's body;
 - kissing; and
 - a person making someone touch their genitals or anus.
- iii. sexual act – behaviour of a sexual nature with or towards another person or when a person is made to do something of a sexual nature. It can include:
 - masturbating in front of another person;
 - a person showing another person their genitals;
 - a person sending another person an unwanted image of genitals, breasts or bottom; and
 - making a person show another person their breasts, bottom or genitals
 - whether or not the breasts are sexually developed, and
 - regardless of the person's gender or sex.
- iv. voyeurism – observing a person on purpose, for sexual gratification, for instance:

- watching someone who is naked;
- watching someone who is wearing underwear only, or trying to see someone's genitals or underwear during day-to-day activities;
- watching someone using the toilet, showering or bathing; or
- watching someone engaged in a sexual act.

v. recording and / or distributing an intimate image - using electronic, digital or other means to make or distribute photographs, audio or visual recordings of another person, including altered images of another person. Recordings may include, or attempts to include, any of the following:

- the other person's breasts, bottom or genitals;
- the other person wearing underwear (sometimes called "upskirting");
- the other person naked;
- the other person using the toilet, showering or bathing; and
- the other person engaged in a sexual act.

f. Sexual Harassment - For the purposes of this Policy, sexual harassment is defined as:

- i. an unwelcome sexual advance, or an unwelcome request for sexual favours; or
- ii. other unwelcome conduct of a sexual nature; in circumstances where, given the circumstances, a reasonable person would have anticipated the possibility that the person experiencing the behaviour would be offended, humiliated or intimidated by the behaviour.

- Examples of sexual harassment include, but are not limited to:

- unwelcome touching, hugging or kissing;
- staring or leering;
- unwanted invitations to go out on dates;
- unwanted requests for sexual contact;
- intrusive questions about a person's private life or body;
- sexually explicit emails or SMS messages; and
- touching or fiddling with a person's clothing, such as lifting up a skirt or pulling down trousers.

g. Staff means any staff member of the University, including officers, employees and contractors of the University and appointees to conjoint, adjunct, emeritus, honorary, clinical and visiting academic positions of the University.

h. Student means a student of the University and includes:

- i. a person who is enrolled in or auditing a Course, Program or Unit of study provided by the University;
- ii. a person who is enrolled in a Course, Program or Unit of study at or offered by an affiliated educational institution which is approved as an Award Course or Program or a Unit of study by the University;
- iii. a person who has accepted an offer of admission to the University but who has not yet enrolled in any Course, Program or Unit of study;
- iv. a student of another educational institution who is authorised by the University to be on or to have access to or use of University property;
- v. a person who was a student at the time of any alleged misconduct;
- vi. a person who became admitted or enrolled as a student after having done so by misleading or dishonest means;
- vii. any person who has been suspended or excluded from a Course, Program or Unit of study at the University;
- viii. a person who is on leave of absence from, or who has deferred enrolment in, a Program or Unit of study offered by the University or by an affiliated educational institution which is approved as an Award Course

- or Program or Unit of study by the University; or
- ix. any person who undertakes any academic exercise on University Premises or which is part of a Course, Program or Unit of study provided, supervised or assessed by the University.
 - i. University means Macquarie University, including:
 - i. its controlled entities; and
 - ii. any educational institution located on the premises of the University.
 - j. University Accommodation means any:
 - i. residential college of the University; and
 - ii. residential premises primarily intended for use as student residences, whether or not they are owned, operated or managed by the University.
 - k. University Premises means any:
 - i. premises owned operated, supervised, occupied or controlled by the University, including premises of which the University is the landlord;
 - ii. premises on which University Activities take place; and
 - iii. University Accommodation.
 - l. University Activities means the activities of the University and the University Community, including:
 - i. teaching, study and research at the University;
 - ii. the management or administration of the University;
 - iii. recreational, commercial, disciplinary or ceremonial activities of the University or the University Community;
 - iv. any clinical, professional or practical work, including workshops, camps or field trips or vocational placements, whether or not it is part of a Course, Program or Unit of study at the University;
 - v. any other activities arranged, sponsored, controlled or supervised by the University;
 - vi. activities on any Macquarie University campus and all Macquarie University controlled buildings, facilities, places, and equipment; and
 - vii. activities using information or communication technologies associated with Macquarie University, such as online learning platforms and social media.
 - m. Vexatious / Malicious reports – a report will be considered vexatious or malicious if:
 - i. it concerns matters which have been previously dealt with;
 - ii. it makes false, inflammatory, irrational or unjustified statements as the basis of the complaint;
 - iii. it constitutes a demand that the University undertakes its processes in a manner directed by the complainant;
 - iv. it is one of multiple complaints raising the same or substantially the same issue; or
 - v. it is rude, threatening or intimidating.

Status and Details

Status	Current
Effective Date	30th August 2022
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Responsible Executive	Rorden Wilkinson Deputy Vice-Chancellor (Academic)
Responsible Officer	Kate Gleeson Project Manager - Respect. Now. Always +61 2 9850 4091
Enquiries Contact	Kate Gleeson Project Manager - Respect. Now. Always +61 2 9850 4091